

CENTRAL COAST DISTRICT OFFICE
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W7a



Filed: 10/24/03
49th day: 12/12/03
Staff: MJN-SC
Staff report prepared: 12/11/03
Hearing date: 01/14/04

Project site is located in the Carmel Highlands area of Monterey County (location map attached as Exhibit 1). The parcel is located approximately 300 feet inland (east) of the intersection of Peter Pan Road and Highway 1. A portion of the parcel is visible from Highway 1 at the Wildcat Creek Bridge. The parcel is located within an existing subdivision, which is largely built out with the average parcel approximately 0.75 acres in size with a few at 1 acre. The project site is located on one of the smallest parcels (0.58 acre) within the subdivision. The project is located within the public viewshed because it will be visible from Highway 1, which is a designated scenic highway. The proposed residence will be located between two existing developed residential parcels that are also in the public viewshed.

Wildcat Creek is a perennial stream that flows north of the parcel through Wildcat Creek canyon. The streambed is approximately 80 feet below on the canyon bottom. There is no riparian habitat associated with the creek at the top of the bank where the parcels northern boundary is located due to the abrupt drop off. The steep slopes leading down to the creek are mainly exposed granitic outcroppings. No springs have been observed on the parcel feeding into the creek.

2. Appellants Contentions. Appellant contentions are a combination of concerns over visual impacts from Highway 1, impacts to the public viewshed; tree loss and disruption of forest corridor; impacts to ESHA due to the projects location within the creek setback. Additionally, the appellant contends that the residence as approved will not be subordinate nor blend into the environment. Appellant contends that the issues could be addressed by relocation of the septic system, thus allowing the residence to be sited on an alternative location on the parcel and requiring the use of other building materials to be subordinate to the surrounding environment.

Visual Issues. Appellant contends the project is clearly visible from Highway 1. Appellant contends that the projects removal of 10 trees on the parcel maximizes the removal of trees, breaks the forested corridor and exposes the new structure to the public viewshed on Highway 1. Appellant further contends that the exterior of the residence, which consists of tan stucco and red tile roofs are not subordinate with the surrounding environment as required by the LCP.

The LCP Visual Resource and other relevant policies applicable to the appellant's contentions include:

*2.2.3.4 The portion of a parcel least visible from public viewpoints and corridors shall be considered the most appropriate site for the location of new structures. **Consistency with other plan policies must be considered in determining appropriate siting.*** [emphasis added]

2.2.3.7 Structures shall be located and designed to minimize tree removal and grading for the building site and access road...

2.2.3.8 Landscape screening and restoration shall consist of plant and tree species consistent with the surrounding native vegetation...



Section 20.146.030.C.1. Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. If necessary, modification of plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process.

Section 20.146.030.C.1.c. Structures located in the public viewshed shall be designed to minimize visibility and to blend into the site and site surroundings. The exterior of buildings should give the general appearance of natural materials (e.g., buildings are to be of weathered wood or painted in earth tones)...

Section 20.146.060.D2. Removal of trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.146.030.A.¹

Section 20.146.060.D.3 Removal of native trees shall be limited to that which is necessary for the proposed development. Prior to the application being considered complete, the development shall be adjusted for siting, location, size and design as necessary to minimize tree removal.

The Carmel Area LCP describes “viewshed” and “public viewshed” as areas visible from major public use areas, which include Highway 1, a designated scenic highway (Policy 2.2.1). The view from Wildcat Creek Bridge (Highway 1) looking east up Wildcat Creek canyon includes Monterey pine forest with other native vegetation along and on top of steep canyon walls. The view on the south side of the creek along the top of the bank includes two residences that can be seen among the trees. The two residences are 1) an existing Mission style stucco residence on the west side of the project site and 2) the appellant’s residence, which consists of painted wood exterior, on the east side of the project site. Both residences are screened with trees native to the surrounding area. As with the two residences on adjacent parcels to the east and west of the project site, the approved structure will be somewhat visible from Highway 1.

The approved project will remove 10 trees. However, two of these trees are dead and are considered to pose a hazard to the future development. The LCP does not require a coastal development permit to remove dead trees considered to pose a hazard to life or structures (Section 20.146.060.A.b). There will be 18 trees remaining on the parcel after tree removal is completed.

Issue Analysis. The approved residence site is not located in the least visible portion of the property (see site plan Exhibit 2). The residence is sited on the north portion of the parcel, which encroaches into the public viewshed more so than if it was sited further south on the parcel toward Peter Pan Road. Siting the residence further south on the parcel would allow denser forest cover help screen the structure

¹ Critical viewshed in this instance refers to the public viewshed in the Carmel Area LCP. It is not used to mean critical viewshed as defined in the Big Sur LCP, which is more restrictive and prohibits development from impacting the critical viewshed. The Carmel Area LCP allows for development within the public viewshed, which means its visible from Highway 1 and/or other public viewing areas, provided it is clearly subordinate to the natural character and meets other LCP Visual Resources requirements.



and cause the building footprint to be further away from the edge of the Wildcat Creek Canyon viewshed. Moving the structure on an alternative site on the parcel is not feasible due to septic system design constraints.

Septic system constraints include required minimum setbacks from the cliff embankment, trees, setback from the residence and the relatively small parcel size available for development. Chapter 15.20 Sewage Disposal is an ordinance adopted by reference as part of the LCP. Applicable regulations include:

Section 15.20.070. Standards and Specifications

- A. Location of Septic Tank Systems. The type of system permitted shall be determined on the basis of location, soil characteristics and topography, and groundwater level, and shall be designed to receive all sanitary sewage from the property. The Director may require such inspections and tests of the site of proposed installation, and the materials proposed to be used, as in his/her judgment are necessary to safeguard health and sanitation. Any tests required by the Director shall be made in the manner directed by him/her at the expense of the applicant.*

No septic tank system, or part thereof, shall be located at any point having less than the minimum distances indicated in Table A, unless, for good cause, a variance therefore is allowed by the Director. (Table A is attached as Exhibit 6)

More specifically, Monterey County Health Department septic system requirements preclude drain fields from being sited within 10 feet of any major trees, nor placed within 50 feet of a cliff embankment. In addition, regulations require that a ten-foot clearance to the structure be maintained. The approved septic system design includes a gravity flow system and is preferred by the County Health Department because it is more reliable during power failures. The maximum depth recommended by the Percolation and Groundwater Study² for trench lines is 15 feet. Appellant contends that putting a 45-degree angle in the leach line will allow the residence to be sited approximately 20 feet closer to Peter Pan Road.

The County Health Department has conducted two site inspections in response to the appellant's proposed alternative for the residence and septic system design. The Health Department has determined that the alternative design would interfere with the percolation surfaces of the leach line and that the alternative house site would reduce space required for future leach line repairs or for modifications to leach line design. The County Health Department has determined that putting a 45-degree angle bend in the leach line will hydraulically overload the area where the bend is located. The County Health Department has indicated that it prefers to have leach lines located in straight lines because they can then flow by gravity. Moreover, the County Health Department has stated that to split it into two

² *Percolation & Groundwater Study with Septic System Design Recommendations for the Koppert Property*, Grice Engineering; September 2002 pg. 6



trenches as the appellant suggests would possibly place one of the leach lines slightly uphill from the septic tank. Consequently, in order to flow by gravity the trench would need to be deeper into the ground, which runs into issues of bedrock 10 to 15 feet below the ground surface. Therefore, placement of the septic system is constrained to its approved location on the southern portion of the parcel.³

Conclusion. The project is not entirely consistent with the Visual Resource policies of the LCP but as consistent as possible while still accommodating an adequate septic system. The project minimizes tree removal to those that are necessary for the development. No trees are being removed that surround the structure with the exception of the south side where the driveway is located, thus the forested corridor will not be disrupted. The LCP allows for removal of trees to the minimum necessary for siting structures (Policy 2.2.3.7). The project has been conditioned to replace removed trees on a 2:1 ratio for all trees regardless of diameter.⁴ The project will plant 14 trees on site, nine of these replacement trees will be planted along the top of the bank and the west side of the structure to help provide additional screening from the public viewshed as seen from Highway 1. Moreover, since project approval, the applicant has submitted a revised landscape plan that limits tree removal to those located within the actual structure footprint (total of 5 trees) and the two adjacent to the driveway on the south side of the parcel and residence, which pose a hazard to the future development. In addition, if it were possible to reconfigure the septic system location, the effect of moving a structure as large as a residence approximately 20 feet further south, per the appellant's recommendation, would be minimal. It will not cause the structure to be much less visible in this instance due to lot location and size.

Regarding the projects exterior building materials, the color tones submitted by the applicant to County staff are earth tones and are required to blend in with the natural surrounding, consistent with LCP requirements. The project has been conditioned to require a field inspection and approval of the final color prior to occupancy of the building, to ensure the color chosen blends with the natural surrounding. The use of red tiled roof is consistent with other existing structures in the area including but not limited to, the residence west of the project site, which was built in the 1920s. In addition, the recently remodeled Carmel Highlands Fire Protection station uses the same Mission style architectural design that includes red tiled roofing.

Thus, the County's approval does not raise a substantial issue regarding the projects consistency with the LCP standards for protecting visual resources.

ESHA. Appellant contends the adequacy of required eight-foot setback from the top of the bank to ensure protection of riparian vegetation. Appellant further contends that her own house (immediately adjacent east of the parcel) was required to be setback 20-feet from the top of the bank and required a variance to encroach into the appellant's front yard setback.

³ Transcript from Board of Supervisors Hearing 10/7/03

⁴ Carmel IP Section 20.146.060.D.6 requires that trees 12 inches or more in diameter (measured at breast height) be replaced on a 1:1 ratio.



LCP policies relevant to appellant's contentions are as follows:

2.3.3.2 Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.

2.3.3.3 New development adjacent to environmentally sensitive habitat areas shall be allowed only at densities compatible with the protection and maintenance of the adjoining resources. New subdivisions shall be approved only where potential impacts to environmentally sensitive habitats from development of proposed parcels can be avoided.

Section 20.146.040.C.2.c. Riparian plant communities shall be protected by establishing setbacks consisting of a 150-foot open space buffer zone on each side of the bank of perennial streams and 50 feet on each side of the bank of intermittent streams or the extent of riparian vegetation, whichever is greater. The setback requirement may be modified if it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation. Staff may require that this determination of the setback and/or extent of riparian vegetation be made by a qualified biologist.

Wildcat Creek is a perennial stream subject to a 150-foot buffer. The building footprint is 8 feet from the top of the bank of Wildcat Creek. However, due to the stream running through a canyon 80 feet below in this region, the streambed is actually in excess of 150 linear feet from the construction site. The residence cannot be sited further south toward Peter Pan Road due to septic system constraints noted earlier in this staff report. Existing trees between the proposed residence and the top of the bank will remain intact.

The LCP allows modification of required setbacks provided it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation (Policy 2.3.4.1 *Riparian Corridors and Other Terrestrial Wildlife Habitats*; Section 20.146.040.C.2.c). The County found that the appellant's residence setback from the top of the bank to be inadequate and thus required a variance for encroachment into the front yard setback. The County, in determining the applicant's required setback, based its decision after review of the project and its associated geotechnical and soils report. In addition, since project approval an addendum to the biological report (October 11, 2003; attached as Exhibit 7) was completed for the project site with respect to addressing specific impacts to Wildcat Creek. The following excerpt supports the County's decision that adequate distance exists to ensure protection of existing riparian habitat consistent with LCP requirements:

While not stated in my prior report, there are exposed granitic outcroppings on the steep slopes



*down to Wildcat Creek. Such outcrops are indicative of a very stable subsurface. Additionally there were no springs noted coming from the Koppert property. Therefore, **any effect on the riparian habitat would have to be a condition that would affect the canyon bottom itself where Wildcat Creek flows along the property line. I found none to exist.** [emphasis added].*

Because the project does not impact the canyon bottom where the stream flows, no impacts will affect riparian vegetation associated with Wildcat Creek. The project has been conditioned for runoff to avoid off-site impacts and plant additional trees along the top of the bank between the structure and the cliff embankment.

Thus the County's approval does not raise a substantial issue regarding the projects consistency with the certified LCP standards for protecting ESHA from development impacts.

II. Recommended Motion and Resolution

MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-03-106 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

*Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-MCO-03-106 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300

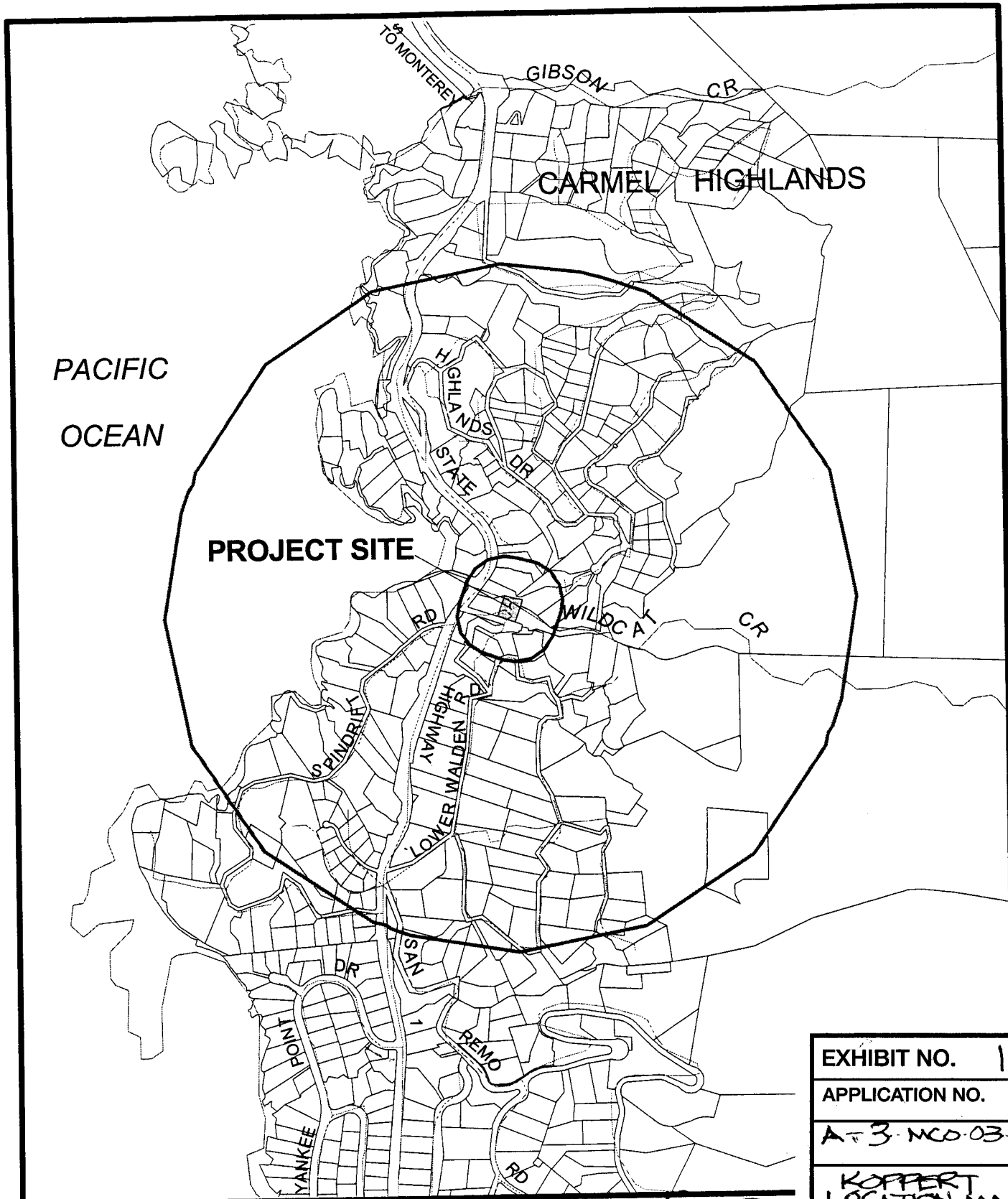


feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 100 feet of a stream.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea and thus, this additional finding would not need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.





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|-------------------------|----------------|
| EXHIBIT NO. | 1 |
| APPLICATION NO. | A-3-MCO-03-106 |
| KOPPERT LOCATION MAP | |

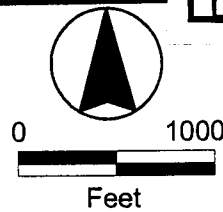
APPLICANT: KOPPERT

APN: 241-201-020-000

FILE# PLN 020578

 300' Limit

 2500 Limit



PLANNER: ECHIBURU

MaKenzie Patterson Architect
C7065
Box 2497, Carmel, CA 93921
Phone: (831) 624-5377, Fax: (831) 624-3095

Mr. James Koppert
A Residence For:
Peter Pan Road, Carmel Highlands,
California 93923
Monterey County A.P. No. 241-201-020, Phone: (916) 928-0770

A Residence for:

TOPOGRAPHIC SURVEY
OF A PORTION OF THAT CERTAIN 0.58 ACRE PARCEL DESCRIBED AS
PARCEL 8 IN DOCUMENT NO. 2002022444, MONTEREY COUNTY RECORDS

PREPARED FOR
JAMES KOPPERT

PREPARED BY
RASMUSSON LAND SURVEYING, INC.
PO BOX 3135
SALT LAKE CITY, UT 84111-0315

JULY 12, 2003

PROJECT NO. 22051.00

GRAPHIC SCALE

3

| |
|-----------------------------------|
| EXHIBIT NO. 2 |
| APPLICATION NO. A 3-MCO-03-106 |
| SITE PLAN p.1 |
| KOPPERT |

EXHIBIT NO. 3

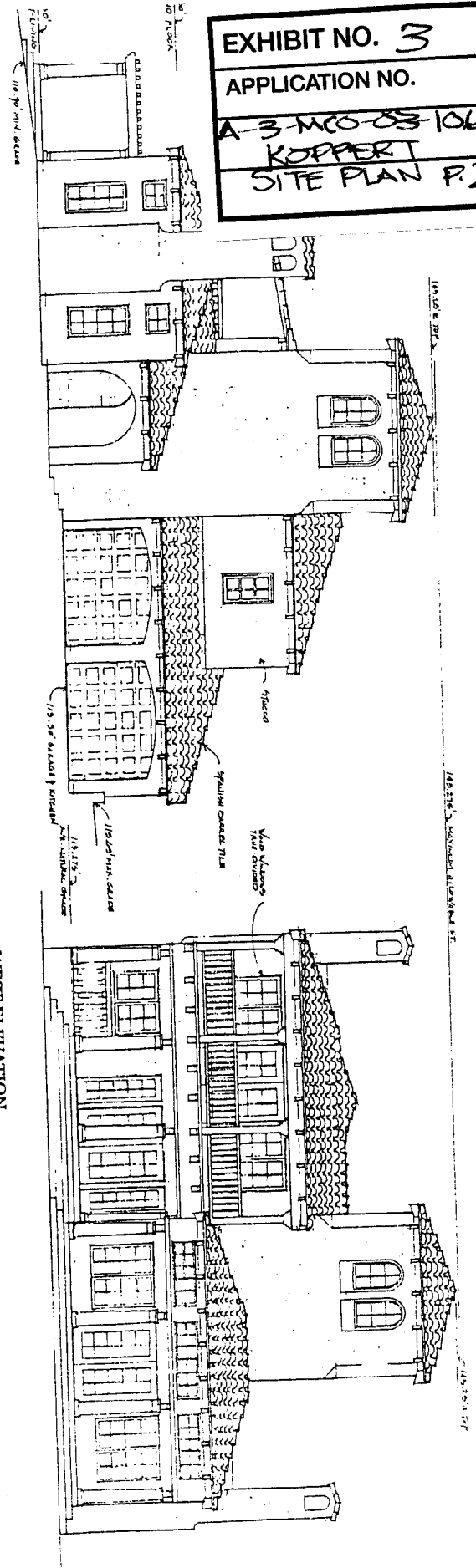
APPLICATION NO.

A-3-MCO-08-106

KOPPERT

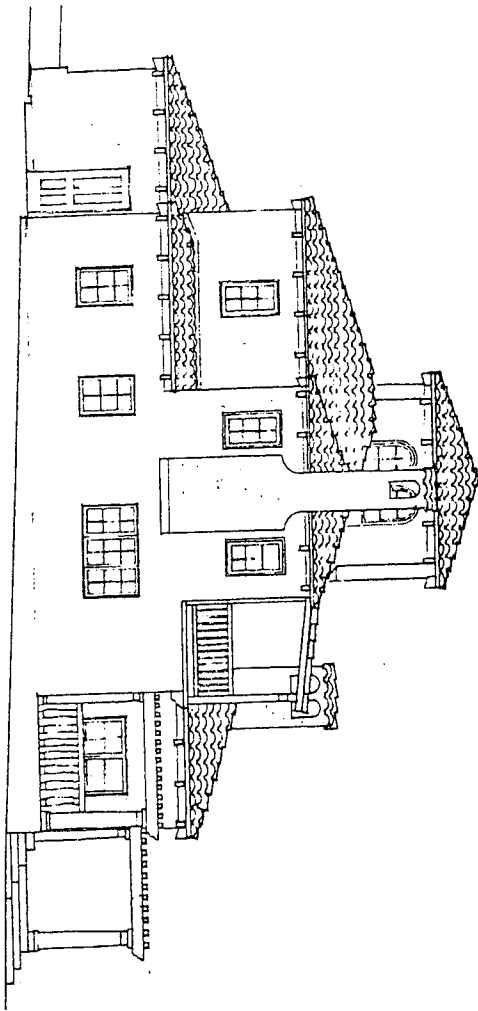
SITE PLAN P.2

SOUTH ELEVATION

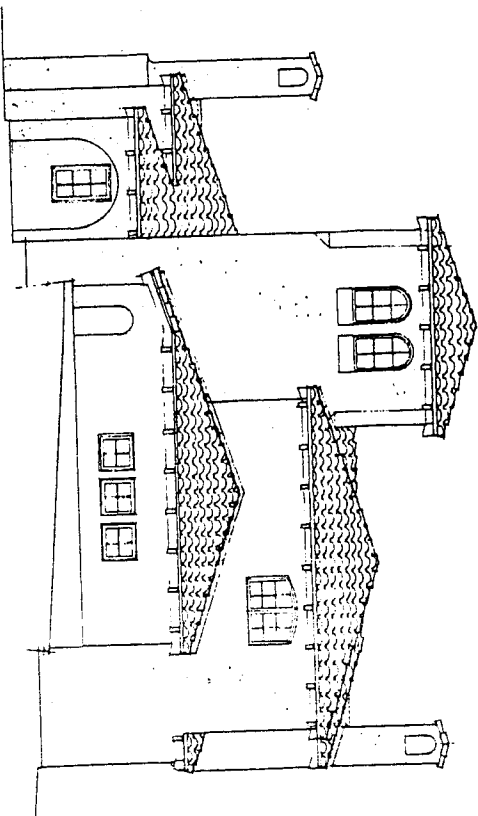


WEST ELEVATION

NORTH ELEVATION



EAST ELEVATION



Scale: 1/4" = 1'-0"

2

A Residence for:

Mr. James Koppert

Peter Pan Road, Carmel Highlands, California 93923
Monterey County A.P.No.241-201-020. Phone:(916) 928-0770

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RECEIVED

OCT 15 2003

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

*Before the Board of Supervisors in and for the
County of Monterey, State of California*

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-MCO-03-331
APPEAL PERIOD 10/16-10/29/03

Resolution No. 03-341

Adopt a Mitigated Negative Declaration; Adopt a Mitigation
Monitoring and Reporting Program; and approve a Combined
Development Permit and Design Approval (PLN020578 Koppert) for
development on Assessor's Parcel Number 241-201-020-000
consisting of a Coastal Administrative Permit to allow construction of
a new 2,330 sq. ft. single family dwelling with an attached garage; a
Coastal Development Permit for development within 100 feet of an
environmentally sensitive habitat area (Wildcat Creek); and a Coastal
Development Permit for the removal of six Monterey pines, two oaks
and two Monterey cypress trees. The property is located at 29703
Peter Pan Road, approximately 500 feet east of the intersection with
Highway 1, Carmel Highlands.

In the matter of the application of PLN 020578 (Koppert)

WHEREAS: The Monterey County Board of Supervisors pursuant to regulations established by local ordinance and state law, has considered, at public hearing, an application for a Combined Development Permit (PLN020578 Koppert) to Adopt a Mitigated Negative Declaration; Adopt a Mitigation Monitoring and Reporting Program; and approve a Combined Development Permit and Design Approval (PLN020578 Koppert) for development on Assessor's Parcel Number 241-201-020-000 consisting of a Coastal Administrative Permit to allow construction of a new 2,330 sq. ft. single family dwelling with an attached garage; a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat area (Wildcat Creek); and a Coastal Development Permit for the removal of six Monterey pines, two oaks and two Monterey cypress trees.

NOW, THEREFORE, the Board of Supervisors finds as follows:

- FINDING: CONSISTENCY** - The Project, as conditioned is consistent with applicable plans and policies, Carmel Area Land Use Plan, Coastal Implementation Plan (Part 4), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for residential development.

EVIDENCE:

- PBI staff has reviewed the project as contained in the application and accompanying materials for consistency with the Carmel Area Land Use Plan, Coastal Implementation Plan (Part 4), and Part 6 of the Coastal Implementation Plan. PBI staff has reviewed the project as contained in the application and accompanying materials for conformity with the Monterey County Zoning Ordinance (Title 20) and has determined that the project is consistent with the Carmel Area Land Use Plan which designates this area as appropriate for residential development. Staff notes are



California Coastal
Commission

provided in Project File PLN020578.

File Number A-3-MCO-03-106
File Name KOPPERT SFD

Exhibit 4
Pg 1 of 14

which designates this area as appropriate for residential development. Staff notes are provided in Project File PLN020578.

- (b) An archeological survey identified that the parcel contains a portion of an archeological site. The building footprint was investigated further and the consulting archaeologist concluded that the site is of limited significance and is not unique. A mitigation measure requires that an archaeological monitor be present during excavation activities to ensure that no potential archaeological resources are impacted.
- (c) A biological report prepared for the project by Vern Yadon, dated October 7, 2002 determined that no sensitive plant species exist on the site. The proposed project footprint will be within 50-feet from the bank of Wildcat Creek. However, because the canyon is approximately 80-feet deep, the streambed of Wildcat Creek is in excess of 150 linear feet from the construction site. As conditioned, runoff will be designed to avoid off-site impacts. Therefore, the project will not impact the long term maintenance of the riparian corridor.
- (d) A two-to-one (2:1) replacement of removed trees will be required, totaling 16 replacement trees. It was determined in the Forest Management Plan prepared by Staub Forestry and Environmental Consulting, dated January 2003, that sufficient room exists on the site to plant the necessary replacement trees in accordance with the required ratio.
- (e) The project planner conducted an on-site inspection on May 14, 2003 to verify that the project on the subject parcel conforms to the plans listed above.
- (f) Health Department staff conducted an on-site inspection on September 9, 2003 and concluded that the house could not accommodate a septic system in the location presented by appellants Terry and Joan McHenry. Staff recommended that the location of the house remain in the site approved by the Zoning Administrator.
- (g) A single family home is an allowed use in accordance with Sections 20.14.040.
- (h) The parcel is zoned Low Density Residential, 1 unit/acre, Design Control District, Coastal Zone ("LDR/1-D (CZ))." The project is in compliance with Site Development Standards for a Low Density Residential District in accordance with Section 20.14.060.
- (i) LAND USE ADVISORY COMMITTEE: The Carmel Area Land Use Advisory Committee (LUAC) recommended approval of the project by a vote of 6-0. LUAC meeting minutes dated February 3, 2003.
- (j) The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN020578.

2. **FINDING: NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.

EVIDENCE:

- (a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on subject property.

3. **FINDING: HEALTH AND SAFETY** - The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- (a) The project was reviewed by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, and Carmel Highlands Fire Protection District. The respective departments and agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. The applicant has agreed to these conditions as evidenced by the application and accompanying materials and conditions.
- (b) Technical reports have been provided by consulting geotechnical engineers and geologists with recommended conditions and modifications that provide additional assurances regarding project safety. "Geotechnical Soils-Foundation & Geoseismic Report with Geohazard Evaluation" prepared by Grice Engineering, Inc dated September 2002; "Percolation and Groundwater Study with Septic System Design Recommendations" prepared by Grice Engineering, Inc. dated September, 2002. Reports are in Project File PLN020578.

4. **FINDING: SITE SUITABILITY** - The site is suitable for the use proposed.

EVIDENCE:

- (a) The project has been reviewed for suitability by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and Carmel Highlands Fire Protection District. Conditions recommended have been incorporated.
- (b) Technical reports by outside biology, archaeology, geology and geotechnical consultants indicate that there are no physical or environmental constraints such as geologic or seismic hazard areas or similar areas that would indicate the site is not suitable for the use proposed. "A Biological Report for the Koppert Property" prepared by Vern Yadon dated October 7, 2002. "Archaeological Evaluation of a Portion of CA-MNT-437, on Assessor's Parcel 241-201-020-000" prepared by Archaeological Consulting dated November 19, 2002; "Geotechnical Soils-Foundation & Geoseismic Report with Geohazard Evaluation" prepared by Grice Engineering, Inc dated September 2002; "Percolation and Groundwater Study with Septic System Design Recommendations" prepared by Grice Engineering, Inc. dated September, 2002. Reports are in Project File PLN020578.
- (c) Staff conducted an on-site visit on May 14, 2003 to verify that the site is suitable for this use.
- (d) Necessary public facilities are available and will be provided.

5. **FINDING: CEQA:** - On the basis of the whole record before the Zoning Administrator there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment.



The mitigated negative declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

- (a) The Monterey County Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. This Initial Study identified potentially significant impacts to aesthetics and biological resources. The applicant has agreed to proposed mitigation measures that reduce the effects to a point where clearly no significant impact would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference. (PLN020578). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.
- b) A Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. Applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval.
- c) Evidence that has been received and considered includes:
 - i) The application
 - ii) "Biological Report for the Koppert Property" prepared by Vern Yadon dated October 7, 2002. "Archaeological Evaluation of a Portion of CA-MNT-437, on Assessor's Parcel 241-201-020-000" prepared by Archaeological Consulting dated November 19, 2002; "Forest Management Plan" prepared by Staub Forestry and Environmental Consulting, dated January 2003; "Geotechnical Soils-Foundation & Geoseismic Report with Geohazard Evaluation" prepared by Grice Engineering, Inc dated September 2002; "Percolation and Groundwater Study with Septic System Design Recommendations" prepared by Grice Engineering, Inc. dated September, 2002.
 - iii) staff reports that reflect the County's independent judgment
 - iv) information and testimony presented during public hearingsThese reports are on file in the offices of PBI (File Reference PLN020578) and are incorporated by reference herein.
- d) Adverse impacts to the riparian corridor could occur from the spread of non-native invasive plants. These impacts have been reduced to a less than significant level through a weed eradication and abatement plan.
- e) Given the nature of archeological resources in a highly sensitive area, where they may be discovered during construction activities, potential adverse impacts could occur during construction. In order to reduce these potential impacts to a less than significant level, a mitigation measure has been imposed on the project to ensure that an archaeological monitor be present during construction activities.
- f) The mitigated negative declaration was circulated for public review from May 22, 2003 to June 20, 2003. The County has considered the comments received during the public review period, and they do not alter the conclusions in the Initial Study and negative declaration.

6. **FINDING: PUBLIC ACCESS** - The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE:

- (a) The subject property is not described as an area where the Local Coastal Program requires access.
- (b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 3, the Public Access Map, of the Carmel Area Land Use Plan.
- (c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
- (d) Staff site visit on May 14, 2003.

7. **FINDING: APPEAL** - An appeal of the July 31, 2003 action of the Zoning Administrator, issued August 1, 2003, was timely filed by Terry and Joan McHenry on August 11, 2003.

EVIDENCE:

- (a) The property that is the subject of this appeal is located at 29703 Peter Pan Road, approximately 500 feet east of the intersection with Highway 1 (Assessor's Parcel Number 241-201-020-000), Carmel Highlands, in the Coastal Zone of the County of Monterey.
- (b) Zoning Administrator Resolution No. 020578, Planning and Building Inspection Department File No. PLN020578, and the administrative record;
- (c) Appellants filed an appeal from the decision of the Zoning Administrator on the grounds that the findings, conditions, or the decision of the Zoning Administrator were not supported by the evidence. Said appeal has been filed with the Clerk of the Board of Supervisors within the time prescribed by Monterey County pursuant to Zoning Ordinance Chapter 20.86;
- (d) Said appeal has been determined to be complete;
- (e) The Board of Supervisors has reviewed, evaluated, and considered the appeal and responds as follows:

General Contention (Location of House)

The appellants' main issue is that the proposed house could be moved 22 feet south while still allowing an adequate septic system. This would make the house less visible and would avoid the removal of additional trees.

Staff Response

Staff has determined that the proposed house will be visible from Highway 1 independent of its location on the site. It is conceivable that moving the house 22 feet to the south could make it less visible from the highway than at its current location, and could reduce the number of trees removed.



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Exhibit **4**
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However, the house site is constrained by the septic system, which cannot be located anywhere else on the property.

The septic system cannot be located on the north portion of the site due to the steep banks of Wildcat Creek, and cannot be located on either side of the proposed house due to side yard and house/septic system setbacks requirements. The underlying geology does not allow for shorter leach lines than the ones proposed and setback requirements between the house and the septic system itself leaves no room to move the house in the direction proposed by the appellants.

Health Department staff conducted two site inspections in order to evaluate the appellants' proposed alternative for the house and septic system design. Staff found that the alternative design would interfere with the percolation surfaces of the leach line and that the alternative house site would reduce space needed for future leach line repairs or for modifications to leach line design. Therefore, the house cannot be sited as proposed by the appellants. (Exhibit "J") The location approved by the Zoning Administrator is the least visible from the highway and where tree removal is the minimal necessary for the proposed development.

Specific Contentions

1. Least Visible Part of Site

The appellants contend that the project is inconsistent with Section 20.146.030.C.1 of the Carmel Area Coastal Implementation Plan (CIP) which states in part: "If the parcel is visible within the public viewshed, that portion of the parcel least visible from major public viewing areas, pursuant to Section 20.146.020.Y, shall be considered the most appropriate site for the location of new structures."

Appellants state *"This project is eight feet from the top of bank on Wildcat Creek [and] is not on the least visible [portion] from the public viewshed."*

Staff Response

Given the location of the parcel in question relative to Highway 1, any location of the proposed residence will be visible from the highway. Septic system design requirements and site constraints do not allow positioning the residence in a less visible portion of the site. Consequently, staff finds that the project, as proposed, is in the least visible portion of the site. The evidence contained in the record shows that there is no feasible, alternative, location for the proposed house that would make it less visible from Highway 1. The project meets the design control measures of Section 20.146.030.C.1.a-e of the Carmel Area CIP as discussed below.

2. Set Back

The appellants contend that the project is inconsistent with Section 20.146.030.D.2.a of the CIP which states: "New development along Highway 1 between Point Lobos and the South end of Spindrift Road shall be set back to preserve the forested corridor effect and minimize visual impact".

Appellants state *"This project removes 10 trees and the siting of the development on the bank is a violation of this standard"*.

Staff Response

The proposed project is located on a parcel along Peter Pan Road and backs up to Wildcat Creek. This project site does not have frontage along Highway 1. Therefore, Section 20.146.030.D.2.a of the Carmel Area CIP does not apply to the proposed development.

3. Critical Viewshed

The appellants contend that the project is inconsistent with Section 20.146.060.D.2 of the CIP which states: "Removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.146.030.A."

Appellants state *"This project removes 10 trees which totally exposes the new structure to the critical viewshed"*.

Staff Response

Proposed tree removal is the minimal necessary to accommodate the proposed development. Staff has determined that there is no feasible, alternative, location on the site where development would not be in the critical viewshed. Therefore, Section 20.146.060.D.2 of the CIP is not applicable to the proposed project because there are no trees proposed for removal that could potentially shield this project from Highway 1 (critical viewshed).

4. Tree Removal

The appellants contend that the project is inconsistent with Section 20.146.060.D.3 of the CIP, which states: "Removal of native trees shall be limited to that which is necessary for the proposed development. Prior to the application being considered complete, the development shall be adjusted for siting, location, size and design as necessary to minimize tree removal".

Appellants state *"This development is sited to maximize removal of trees. It is impossible to site this project any place on this parcel that would remove more trees"*. The appellants presented a drawing that shows an alternate location for the house where less trees would be removed (Exhibit "T").

Staff Response

Staff conducted a site visit to verify that the tree removal proposed for the project is the minimal necessary to accommodate development. A detailed analysis of tree removal is presented in the Tree Removal section of the Zoning Administrator staff report (Exhibit "C"). Health Department staff conducted two site inspections in order to evaluate the appellants' proposed alternative for the house and found that the alternative site would conflict with Health Department requirements for the septic system (Exhibit "J"). Therefore, staff finds that septic system design requirements restrict the project so that there is no feasible, alternative, location that would further minimize tree removal.

5. Variance

The appellants raise the issue that they were required to obtain a front-yard variance in order to comply with requirements regarding a top of bank setback from Wildcat Creek.

Staff Response

Carmel Area CIP section 20.146.040.C.2.c states in part: *"Riparian plant communities shall be protected by establishing setbacks consisting of a 150 foot open space buffer zone on each side of the bank of perennial streams and 50 feet on each side of the bank of intermittent streams or*



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the extent of riparian vegetation, whichever is greater. The setback requirement may be modified if it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation."

During review of the appellants' house, setback from the top of bank was found to be inadequate. In order to provide adequate setback, the building footprint had to be moved south. This resulted in an encroachment into the front yard setback and thus the need for a variance.

In the case of the applicant's project, the footprint of the proposed house does not encroach into any required setback. During staff review of the project and its associated and geotechnical and soils reports, it was determined that adequate distance existed from the bank Wildcat Creek to ensure the protection of the existing riparian vegetation, consistent with CIP section 20.146.040.C.2.c.

6. Design

The appellants contend that the color and the stucco exterior of this project is inconsistent with Section 20.146.030.C.1 which states in part:

Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. If necessary, modification of plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process.

Staff Response

Carmel Highlands/Unincorporated Carmel Land Use Advisory Committee reviewed the project and voted 6-0 to recommend approval (Exhibit "F"). CIP section 20.146.030.C.1.c states in part: *The exterior of buildings should give the general appearance of natural materials (e.g., buildings are to be of weathered wood or painted in earth tones).* Staff finds that this Section of the CIP does not limit the exterior materials of a building to wood, but does require that the exterior material be painted in such a way that the structure does not stand out from its natural surrounding. Color samples for the proposed house presented by the applicant are earth tones, which are consistent with the LUP/CIP requirements. Understanding that color samples could vary when applied to a structure and in order to ensure that the final color of the house blends in with the natural surrounding, staff included a condition that requires a field inspection and approval of the final color prior to occupancy of the building (Condition # 18). As conditioned, staff finds the project is consistent with the requirements of the Carmel Area LUP and CIP.

8. **FINDING: APPEALABILITY** - The project is appealable to the California Coastal Commission.

EVIDENCE: (a) Section 20.86.080.A.2 of the Monterey County Zoning Ordinance (Title 20).

DECISION-PROJECT

In view of the above findings and evidence, the Board of Supervisors hereby adopts the Mitigation Declaration and Mitigation Monitoring Program, and grants the application

for a Combined Development Permit (Koppert - PLN020578) subject to the following conditions:

1. The subject Combined Development Permit consists of Coastal Administrative Permit to allow construction of a new 2,330 sq. ft. single family dwelling with an attached garage; a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat area (Wildcat Creek); and a Coastal Development Permit for the removal of six Monterey pines, two oaks and three Monterey cypress trees including one landmark Monterey cypress; and Design Approval. The property is located at Peter Pan Road n/n, approximately 500 feet east of the intersection with Highway 1 (Assessor's Parcel Number 241-201-020-000), Carmel Highlands area, Coastal Zone. The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection)**

Prior to the Issuance of Grading and Building Permits:

2. The applicant shall record a notice which states: "A permit (Resolution # _____) was approved by the Board of Supervisors for Assessor's Parcel Number 241-201-020-000 on October 7, 2003. The permit was granted subject to 25 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection)**
3. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate

fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. **(Planning and Building Inspection Department)**

4. The applicant shall enter into an agreement with the County to implement the Mitigation Monitoring and/or Reporting Plan in accordance with Section 21.08.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. The Mitigation Monitoring and/or Reporting Plan is contained in the staff report as Exhibit "E" and is hereby incorporated herein in its entirety by reference. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. **(Planning and Building Inspection)**
5. Pursuant to the State Public Resources Code, State Fish and Game Code and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. **This fee shall be paid within five days of project approval,** before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection)**
6. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. The applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits. **(Planning and Building Inspection)**
7. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded with native grasses or otherwise treated to control erosion subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
8. The location, type and size of all antennas, satellite dishes, towers, and similar appurtenances shall be approved by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
9. The applicant shall incorporate all recommendations from the "Geotechnical Soils-Foundation & Geoseismic Report with Geohazard Evaluation" prepared by Grice Engineering, Inc, dated September 2002, into the final building plans. **(Planning and Building Inspection)**



10. Except for tree no. 24, a landmark Monterey Cypress which shall be retained, all removal and replacement planting on the parcel must be in accordance with the Forest Management Plan prepared by Staub Forestry and Environmental Consulting, dated January 2003. Prior to issuance of building permits, the applicant shall submit to the Director of Planning and Building Inspection Department for approval, an updated Forest Management Plan to reflect actual tree removal and replacement ratio allowed by this permit. **(Planning and Building Inspection)**
11. A notice shall be recorded with the Monterey County Recorder which states: "A Forest Management Plan has been prepared for this parcel by Staub Forestry and Environmental Consulting, dated _____, and is on record in the Monterey County Planning and Building Inspection Department Library. All tree removal and replacement planting on the parcel must be in accordance with the Forest Management Plan, as approved by the Director of Planning and Building Inspection." This notice shall be recorded upon the Director's approval of the updated Forest Management Plan required by Condition no. 9, and prior to issuance of building or grading permits. **(Planning and Building Inspection)**
12. Native trees which are located close to the construction site shall be protected from inadvertent damage from construction equipment by:
- Wrapping trunks with protective materials;
 - Fencing around the area within drip lines;
 - Avoiding fill of any type against the base of the trunks; and
 - Avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
- Said protection shall be demonstrated through either photographic evidence or by a site visit with Planning and Building Inspection Department staff prior to issuance of building permits. **(Planning and Building Inspection)**
13. A drainage plan shall be prepared by a registered civil engineer or architect to address on-site and off-site impacts, and necessary improvements shall be constructed in accordance with approved plans. **(Water Resources Agency)**
14. Prior to the issuance of a building permit, the applicant shall obtain from the Monterey County Water Resources Agency (MCWRA), proof of water availability on the property in the form of an approved Water Release Form. **(Water Resources Agency)**
15. Prior to issuance of a building permit, provide to the Director of Environmental Health written certification, and any necessary certification from State agencies that California American Water Company can and will supply sufficient water flow and pressure to comply with both Health and fire flow standards. **(Environmental Health Division)**
16. Prior to issuance of building permits, provide engineered plans to the Division of Environmental Health for the reinforcement of the leach line located in the driveway. **(Environmental Health Division)**



17. Before construction begins, temporary or permanent address numbers shall be posted. Permanent address numbers shall be posted prior to requesting final clearance. All address numbers (permanent & temporary) shall be posted on the property so as to be clearly visible from the road. Where visibility cannot be provided, a post or sign bearing the address numbers shall be set adjacent to the driveway or access road to the property. Address numbers posted shall be Arabic, not Roman or written out in words. Address numbers posted shall be a minimum number height of 3 inches with a 3/8 inch stroke, and contrasting with the background colors of the sign. **(Carmel Highlands Fire Protection District)**
18. The building(s) shall be fully protected with automatic fire sprinkler system(s). The following notation is required on the plans when a building permit is applied for:

"The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with applicable National Fire Protection Association and/or Uniform Building Code Standards, the editions of which shall be determined by the enforcing jurisdiction. Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection." **(Carmel Highlands Fire Protection District)**



Prior to Final Building Inspection/Occupancy:

19. Prior to painting the residence, the applicant shall schedule a site inspection with Planning and Building Inspection Department staff to verify the house colors. Building colors must comply with section 20.146.030.C.1.c of the Carmel Area Coastal Implementation which requires colors to be earth tones and blend with the natural surroundings. The applicant shall have one wall which is exposed to the viewshed painted in the proposed color at least two weeks prior to scheduling the site inspection with county staff. Paint color shall be modified to comply with this condition as deemed necessary by the Director of Planning and Building Inspection Department. Painting of the remainder of the structure shall not commence until the colors have been fully approved by the Director of Planning and Building Inspection Department. **(Planning and Building Inspection)**
20. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
 - a) All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - b) Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. **(Water Resources Agency & Planning and Building Inspection)**
21. Remove flammable vegetation from within 30 feet of structure (or to property line). Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. **(Carmel Highlands Fire Protection District)**
22. The site shall be landscaped. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. **(Planning and Building Inspection)**
23. The landscape plan shall reflect the tree replacement and transplanting indicated in the approved Forest Management Plan. **(Planning and Building Inspection)**



21. Remove flammable vegetation from within 30 feet of structure (or to property line). Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. **(Carmel Highlands Fire Protection District)**
22. The site shall be landscaped. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. **(Planning and Building Inspection)**
23. The landscape plan shall reflect the tree replacement and transplanting indicated in the approved Forest Management Plan. **(Planning and Building Inspection)**

Continuous Permit Conditions:

24. All landscaped areas and replanted trees shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. **(Planning and Building Inspection)**
25. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**

PASSED AND ADOPTED on this 7th day of October 2003, upon motion of Supervisor Johnsen, seconded by Supervisor Lindley, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen

NOES: None

ABSENT: Supervisor Potter

I, Sally R. Reed, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 71, on October 7, 2003.

Dated: October 9, 2003

Sally R. Reed, Clerk of the Board of Supervisors,
County of Monterey, State of California

By _____

Deputy

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Joan Smith McHenry
29705 Peter Pan Road
Carmel, CA 93923 831 - 620-1908
()
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:
Monterey County Board of Supervisors
2. Brief description of development being appealed:
Combined Development Permit, Coastal Admin. Permit For 2,330 sq ft house, Coastal Development Permit within 100 ft of ESHA, Coastal Development Permit for Removal of 10 trees.
3. Development's location (street address, assessor's parcel number, cross street, etc.):
29703 Peter Pan Road, Carmel
APN 241-201-020-000 PLN 020578
4. Description of decision being appealed:
a. Approval; no special conditions: _____
b. Approval with special conditions: X
c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-03-106
DATE FILED: 10-24-03
DISTRICT: Central



California Coastal
Commission

Appeal Form 1999.doc

RECEIVED

OCT 15 2003

File Number A-3-MCO-03-106
File Name COASTAL COMMISSION
KOPPERT CENTRAL COAST AREA

Exhibit 5
Pg 1 of 6

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Please see attached description.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Jean Smith McHenry
Signature of Appellant(s) or Authorized Agent

Date 10-11-03

NOTE: If signed by agent, appellant(s) must also sign below.

SECTION VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.



File Number A-3-MCO-03-106 Exhibit 5
Signature of Appellant(s) KOPPERT Pg 2 of 6
Date _____

REASONS FOR APPEAL TO THE COASTAL COMMISSION

COUNTY DECISION NOT SUPPORTED BY THE EVIDENCE

The Monterey County Board of Supervisors approved this application which is contrary to the provisions of the Coastal Implementation Plan and specifically the Carmel Area Land Use Plan.

1. The Standard in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.C.1, states that if the parcel is visible within the public viewshed, that portion of the parcel least visible from major public viewing areas shall be considered the most appropriate site for the location of new structures.

This project is clearly visible from highway 1 and is sited eight feet from the top of bank on wildcat creek, which is not on the least visible portion of the parcel from the public viewshed.

2. The Specific Development Standard in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.D.2.a, states that new development along Highway 1 between Point Lobos and the South end of Spindrift Road shall be set back to preserve the forested corridor effect and minimize visual impact.

This project removes 10 trees and sites the development on the bank which breaks the forested corridor and is a violation of this standard.

3. The Forest Management Standard in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.A, states that the removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted.

This project removes 10 trees which totally exposes the new structure to the critical viewshed on highway 1.

4. The Forest Management Standard in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.D.3, states that the removal of native trees shall be limited to that which is necessary for the proposed development. Prior to the application being considered complete, the development shall be adjusted for siting, location, size and design as necessary to minimize tree removal.

This development is sited to maximize the removal of trees. It is impossible to site this project anywhere on this parcel that would remove more trees.

5. Protection for ESHAs and riparian communities is provided in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.C.2.c, which states that

riparian plant communities shall be protected by establishing setbacks consisting of a 150 foot open space zone on each side of the bank of perennial streams and 50 feet on each side of the bank of intermittent streams or the extent of riparian vegetation, whichever is greater. The setback requirements may be modified if it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation.

The monterey county planning staff, using geotechnical and soils reports determined that 8 feet from the top of the bank was adequate to ensure protection of the riparian vegetation. Our home built 100 feet upstream with the same soil and geological conditions was required to be 20 feet from the top of the bank.

6. The County of Monterey typically enforces these regulations. Our home was built 7 years ago and we were required to be at least 20 feet from the top of bank and as far from the ESHA of Wildcat Creek as possible and on the least visible portion of the parcel.

We moved the house 100 feet from the property line behind a stand of trees and actually had to have a variance to allow us to encroach on the front yard setback to move it over 20 feet from the bank.

7. The General Development Standards in the Carmel Area Coastal Implementation Plan (CIP) Section 20.146.030.C.1, states that structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that affect. If necessary, modification of the plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process.

This project has a red tile roofs and light tan stucco which are not subordinate or blended into the environment

8. We built our home seven years ago and were told it had to have a wood exterior and painted dark brown to blend with the environment.

We did that. This development is light tan stucco and does not

THIS PROPOSED DEVELOPMENT VIOLATES THE VISUAL RESOURCES STANDARDS OF THE LOCAL USE PLAN.

Septic System - The Staff report and the Zoning Administrator justified approving the placement of this project in violation of the above regulations because of the placement of the septic system. It appears that the Health Department will only approve the leach line between the house and the road. This project is designed with straight leach lines

of maximum length with at least a 6 foot excess going straight from the road to the house which drives the project onto the top of the bank.

We have letters from haro, kasunich and associates soils and geotechnical engineer that this septic system can be designed to meet the health department requirements and still move the house 20 feet closer away from the top of the bank.

THIS CONDITION CAN BE CORRECTED!! The attached drawing shows that the proposed house can be moved back 22 feet without changing the design and maintaining the proposed septic system. This would site the development in the least visible area and save seven trees including 7" Pine, 9" Oak, 16" Oak, 23" Pine, 19" Pine, 15" Pine and 7" Oak. ***This would meet the visual resources standards of the local use plan***

The County Board of Supervisors heard our appeal of the Zoning Administrator's decision to approve this project and with no discussion approved the staff report. Therefore the County decided not to enforce the Local Use Plan, especially when the plan provides the means to do so such as "If necessary, modification of the plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process." We are asking that the Coastal Commission send this project back to the County and direct it to meet the standards by moving or redesigning the septic system and changing the material and color of the house.



California Coastal
Commission

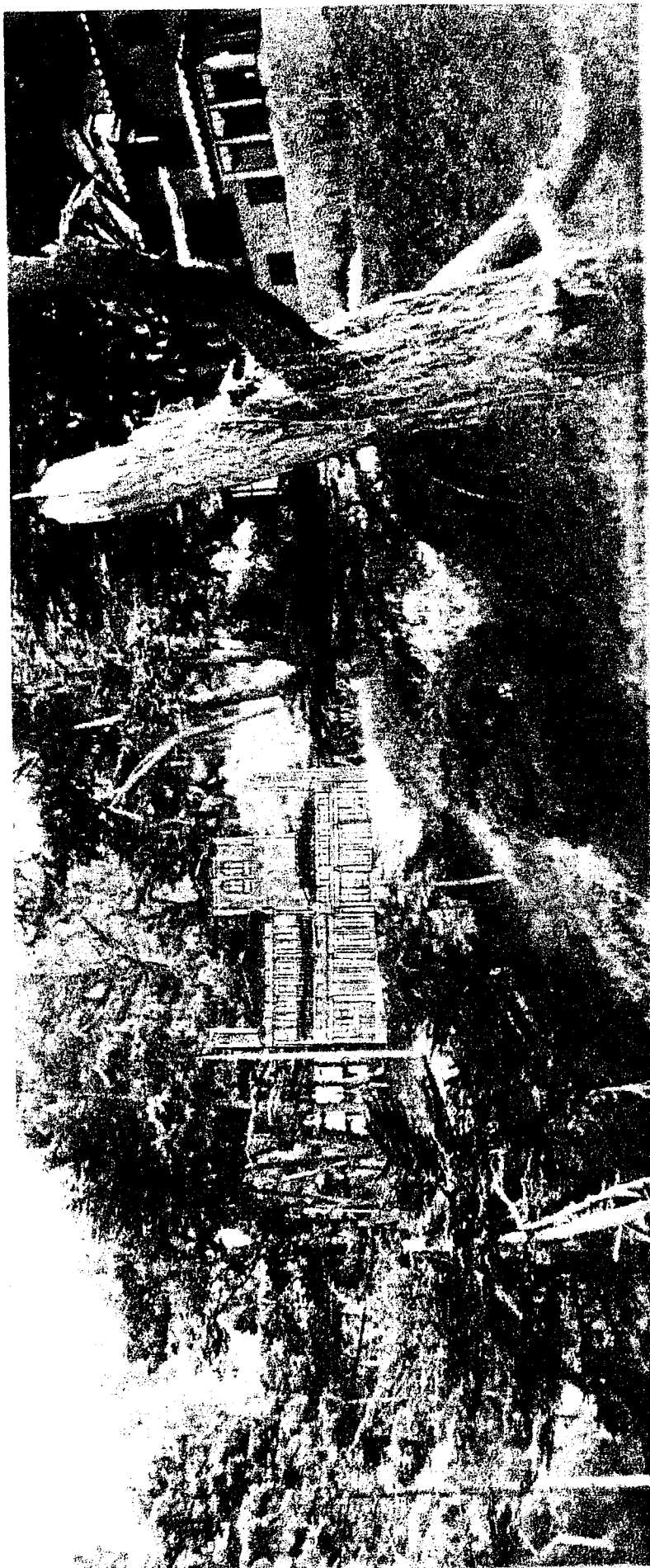
File Number **A 3-MCO-03-106**
File Name **KOPPERT**

Exhibit **5**
Pg **5** of **6**

Staff Note:

This photo appears to have been taken from a location adjacent to the existing residence on the west side of the project site not from Highway 1. Highway 1 is approximately 300 feet further west. In addition, it is not to scale. Placement of the artist's rendering of the residence is overlaid on top of existing trees that surround the structure on the west side and that are located over the embankment that jut up in front of the structure due to their height. Thus, it does not accurately represent a visual analysis nor the existing vegetation that will remain and help screen the proposed residence.

View of proposed house from Highway One, Wildcat Creek Bridge. This is a viewing area from the bridge where people look out to the ocean and up the creek to the waterfall.



was prepared using the flagging and a scaled version of the house proposed. The will be closer to that on the right which is part of the same owner's building! *MC*

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| EXHIBIT NO. 5 |
| APPLICATION NO. |
| A-3-NC003-106 KOPPERT |
| P. 6 OF 6 |

PUBLIC SERVICES
(04/93)

TABLE A

LOCATION OF SEPTIC TANK SYSTEM

| Minimum Horizontal Distance Required From: | Septic Tank | Disposal Field | Seepage Pit |
|---|----------------|-------------------|----------------|
| 1. Building, Structure, or Mobile Home | 5 ft. | 10 ft. | 10 ft. |
| 2. Property Line | 10 ft. | 10 ft. | 10 ft. |
| 3. Domestic water supplies (See also 15.20.070(B)) | 100 ft. | 100 ft. | 150 ft. |
| 4. Ocean, streams, lakes, & natural drainage channels (measured from high water mark) | 100 ft. | 100 ft. | 100 ft. |
| 5. Large trees (trunk 5" or more in diameter, 2 from ground level) | 10 ft. | 10 ft. | 10 ft. |
| 6. Domestic water line | 10 ft. | 10 ft. | 10 ft. |
| 7. Downhill (cut) embankment (Includes basement or any cuts below ground level of structure) | 25 ft. | 50 ft. | 50 ft. |
| 8. Minimum vertical distance above groundwater, measured from <u>bottom of disposal field</u> | 10 ft. | 10 ft. | 10 ft. |

Where a line carrying potable water must cross a disposal field the line shall be at least one foot above the top of the disposal field, and no joint in the pipeline shall be closer than eight feet to the field disposal line.

B. Septic Tank Sites.

(1) The liquid capacity of septic tanks for multiple dwelling, commercial, industrial and institutional buildings shall be at least twice the maximum anticipated daily load as determined empirically or from standards of accepted good practice recognized by state and national authorities.

For the purposes of this chapter the following quantities (daily load) shall be used. All uses will be considered at maximum flow. (See Table B.)

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| EXHIBIT NO. 6 |
| APPLICATION NO. |
| A-3-MCO-03-106 |
| KOPPERT |



VERN YADON

October 21, 2003

Mr. MacKenzie Patterson, Architect
P.O. Box 2497
Carmel, CA 93921

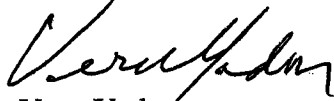
Dear Mr. Patterson:

This letter pertains to the Koppert property on Peter Pan Road, APN 241-201-019 and is an addendum to my Biological Report dated October 7, 2002 (field work September 26, 2002). This letter specifically addresses "potential impacts to Wildcat Creek".

While not stated in my prior report, there are exposed granitic outcroppings on the steep slope down to Wildcat Creek. Such outcrops are indicative of a very stable subsurface. Additionally there were no springs noted coming from the Koppert property. Therefore, any effect on the riparian habitat would have to be a condition that would affect the canyon bottom itself where Wildcat Creek flows along the property line. I found none to exist.

In mitigation 3 of my prior report, I stated that the applicant should follow engineered plans to prevent erosion from water production from roofs and hard surfaces. This is standard practice for most building projects where slopes are involved. Such water production is normally directed to a catchment and is then slowly dissipated. It is unlikely that such impounded water would have any recordable affect on Wildcat Creek.

Sincerely yours,


Vern Yadon
consultant

1119 Buena Vista, Pacific Grove, California 93950

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| EXHIBIT NO. 7 |
| APPLICATION NO. |
| A-3-MC203-106 |
| KOPPERT |